

Message Text

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ACTION EB-11

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TAGS: BDIS, CA

SUBJECT: NORTHROP CORPORATION DISPUTE WITH GOC

REF: (A) STATE 231787 (B) STATE 208929

1. I MET THIS MORNING WITH MINISTER OF SUPPLY AND SERVICES GOYER TO DISCUSS NORTHROP CASE. I REVIEWED BACKGROUND OF CASE AS WE UNDERSTAND IT. I SAID THAT I WAS NOT PREPARED OR EQUIPPED TO ARGUE MERITS OF CASE BUT THAT I HAD BEEN ASKED TO EMPHASIZE USG'S KEEN INTEREST IN SEEING MATTER SETTLED AMICABLY WITHOUT RESORT TO LITIGATION. I POINTED OUT THAT NORTHROP IS RESPECTED SUPPLIER OF EQUIPMENT TO ARMED FORCES, THAT ITS RELATIONSHIPS WITH CANADA HAVE BEEN GOOD IN PAST, AND THAT IT SHOULD BE IN CANADIAN INTEREST TO KEEP THIS RELATIONSHIP IN GOOD ORDER. I OFFERED OPINION THAT LITIGATION WOULD UNDOUBTEDLY RESULT IN USUAL HURRAH IN PRESS AND EXACERBATE SITUATION, WHICH WOULD BE TO NO-ONE'S ADVANTAGE. I NOTED THAT NORTHROP HAD BEEN TOLD BY BOTH ITS OWN LAWYERS AND INDEPENDENT COUNSEL THAT IT HAD AN EXCELLENT CASE. USG HAD LEARNED WITH SATISFACTION OF VICTORIA MEETING AT WHICH NORTHROP AND GOC OFFICIALS HAD COME FAIRLY CLOSE TO AGREEMENT. I WAS HOPEFUL THAT WITH LIMITED OFFICIAL USE

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DIFFERENCE NARROWED TO \$3 MILLION MINISTER GOYER AND

NORTHROP PRESIDENT JONES WOULD BE ABLE TO SIT DOWN AND WORK OUT MUTUALLY ACCEPTABLE SETTLEMENT.

2. BOYER AGREED THAT IT WOULD BE MOST ADVANTAGEOUS TO ALL CONCERNED TO SETTLE CASE WITHOUT RESORT TO LITIGATION. DIFFICULTY IS THAT TWO SIDES STILL FAR APART ON TERMS OF SETTLEMENT. VICTORIA MEETING WAS NOT SATISFACTORY TO GOYER. GOC OFFICIALS HAD MANDATE TO DEFINE ISSUES: SCHEDULES, QUALITY CONTROL, OFFSET ARRANGEMENTS, LICENSING AGREEMENTS SO AS TO HAVE BETTER UNDERSTANDING OF PROBLEM AND THEN COME UP WITH ROUND FIGURE SETTLEMENT. INSTEAD MEETING HAD RESULTED IN PRESENTATION ON BOTH SIDES OF PRECISE FIGURES "UNRELATED TO HARD FACTS." IT WAS IN EFFECT AN ATTEMPT TO BUY PEACE BUT, GOYER SAID, HE COULD NOT JUSTIFY SUCH AN ARRANGEMENT TO HOUSE OF COMMONS OR TO CANADAIR WHICH IS ALSO AN INTERESTED PARTY. (DEPUTY MINISTER DESROCHES, WHO WAS ALSO PRESENT, COMMENTED THAT GOC HAD EXCLUDED CANADAIR FROM VICTORIA MEETING OVER CANADAIR'S STRONG OBJECTIONS.)

3. BOYER SAID HE HAD TELEPHONED JONES WITH A PROPOSAL TO SEPARATE ISSUE OF VENEZUELAN SALE FROM ISSUE OF PAYMENTS DUE NORTHROP AND GOC COUNTERCLAIMS FOR NORTHROP PERFORMANCE FAILURES. HE CONFIRMED PROPOSAL BY LETTER EARLIER THIS WEEK. GOYER'S OFFER ON SECOND ISSUE WAS TO RELEASE \$1,090,000 OF \$6.3 MILLION GOC HAS WITHHELD FROM ROYALTY AND CONTRACTUAL PAYMENTS. GOC HAS COMMITTED ITSELF TO OBTAIN ADDITIONAL COMPENSATION FOR CANADAIR, WHICH GOC CONSIDERS HAS VALID CASE RE NON-PERFORMANCE. CANADIAR WANTS \$9 MILLION BUT GOYER HAS TAKEN TOUGH LINE WITH CANADAIR IN INSISTING CANADAIR BE SATISFIED WITH ABOVE OFFER.

4. RE VENEZUELAN SALE ISSUE, GOYER SAID GAP BETWEEN WHAT GOC PREPARED TO OFFER (\$0.9 MILLION) AND WHAT NORTHROP ASKING (39 MILLION) SO WIDE THAT NO COMPROMISE POSSIBLE. NORTHROP HAS NEVER PROVIDED DETAILED DATA ON ACTUAL EXPENSES INCURRED BY IT IN VENEZUELAN SPADE WORK AND GOYER COULD NOT JUSTIFY SETTLEMENT ABOVE LOW LIMITED OFFICIAL USE

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END OF RANGE. HE ASSUMED THAT JONES WOULD HAVE DIFFICULTY JUSTIFYING TO HIS BOARD OF DIRECTORS SETTLEMENT THAT WAS NOT NEAR HIGH END OF RANGE. HE THEREFORE PROPOSED THAT TWO PARTIES PUT MATTER TO COURT WHICH COULD DECIDE ON BASIS OF LAW AND EVIDENCE. GOC WOULD BE WILLING TO EXPEDITE COURT ACTION WHICH GOYER THOUGHT COULD BE COMPLETED IN SIX MONTHS AND, ASSUMING DECISION WAS NOT "STUPID," GOC WOULD NOT APPEAL. IN

END, DEPENDING ON HOW COURT DECIDED, NORTHROP COULD WIND UP WITH OVERALL SETTLEMENT IN RANGE OF \$2-10 MILLION (I.E. INCLUDING \$1,090,000 THAT GOC PREPARED TO RELEASE PER PARA 3).

5. IN RESPONSE TO QUESTIONS, GOYER AND DESROCHES SAID GOC'S FIGURE OF \$6.3 MILLION FOR WITHHELD PAYMENTS DID NOT INCLUDE INTEREST. GOC AS MATTER OF PRINCIPLE WOULD NOT BE PREPARED TO PAY INTEREST. THEY ALSO SAID THEY AWARE OF NORTHROP'S ALLEGATION THAT WITHHOLDING NOT IN ACCORD WITH GOC PROCEDURAL REQUIREMENTS (PARA 6, REF B) BUT THEY HAVE NO INTENTION OF EXCHANGING MONEY IN HAND FOR NORTHROP BOND. GOC TACTIC NORMAL PRACTICE IN SUCH BUSINESS DISAGREEMENTS; TO ACT OTHERWISE WOULD BE LIKE THROWING IN CARDS WHILE GAME STILL IN PROGRESS.

6. IN CONCLUSION GOYER SAID HE AWARE JONES IS DISSATISFIED WITH GOC OFFER. BUT GOC HAS ALSO BEEN ADVISED BY COUNSEL THAT IT HAD GOOD CASE AND COULD SUE NORTHROP SUCCESSFULLY. SINCE LITIGATION WOULD BE VERY COSTLY, GOYER SAID, HE HAS NO DESIRE TO PURSUE THIS LINE. HE REITERATED THEREFORE THAT BEST SOLUTION WOULD BE FOR NORTHROP TO ACCEPT \$0.9 MILLION FOR PAYMENTS DUE AND LET COURT ARBITRATE SETTLEMENT OF VENEZUELAN ISSUE.

7. COMMENT: I AM, OF COURSE, IN NO POSITION TO ASSESS GOYER'S POSITION ON FACTS OF CASE. AT END OF DISCUSSION I AGAIN EMPHASIZED OUR INTEREST IN AMICABLE OUT-OF-COURT SETTLEMENT. IT IS APPARENT TO ME, HOWEVER, THAT GOYER'S POSITION IS FIRM AND THAT ONLY WAY HE LIKELY TO BE BUDGED SIGNIFICANTLY, IF AT ALL, IS BY INITIATION OF LEGAL ACTION BY NORTHROP.

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